

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

The Wonderful Company LLC,

Plaintiff,

v.

Comrade Brewing Company, LLC,

Defendant.

Civil Action No.:

**COMPLAINT FOR APPEAL AND *DE NOVO* REVIEW OF DECISION OF  
TRADEMARK TRIAL AND APPEAL BOARD**

The Plaintiff, The Wonderful Company LLC (“Plaintiff” or “TWC”) for its complaint against Defendant Comrade Brewing Company, LLC (“Defendant”) alleges as follows:

**NATURE OF ACTION**

1. This is an action seeking judicial review of a final decision of the Trademark Trial and Appeal Board (“TTAB”), an administrative agency of the United States Patent and Trademark Office (“USPTO”), under 15 U.S.C. § 1071(b)(1).

2. On August 2, 2018, a TTAB panel dismissed Plaintiff’s trademark opposition which was brought based on its U.S. Federal Trademark Registration No. 3382295 for its ANTIOXIDANT SUPERPOWER mark used on fruit juices, against Defendant’s U.S. Trademark Application No. 86905132 for SUPERPOWER for beer in International Class 32. In dismissing Plaintiff’s opposition, the TTAB found that Defendant’s SUPERPOWER mark was not likely to cause confusion with Plaintiff’s registered ANTIOXIDANT SUPERPOWER.

### **THE PARTIES**

3. Plaintiff is a corporation organized and existing under the laws of Delaware, with offices at 11444 W. Olympic Blvd. Los Angeles, California 90064.

4. Upon information and belief, Defendant is a company organized and existing under the laws of Colorado, with its office located at 7667 East Iliff Avenue F, Denver Colorado 80231.

### **JURISDICTION AND VENUE**

5. This is an action for judicial review of a final decision of the TTAB under Section 21 (b)(1) of the Lanham Act, 15 U.S.C. § 1071(b)(1).

6. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 as it involves claims presenting federal questions under 15 U.S.C. § 1071 (b)(1) and 1121(a). These sections provide that a party to an opposition proceeding may have remedy by a civil action, and a court may adjudge that the application involved be rejected or may order such other relief as the issues in the proceeding require.

7. Venue is proper in this district pursuant to 15 U.S.C. § 1071(b)(4) which designates the United States District Court for the Eastern District of Virginia to be the proper venue for appeals from the decisions of the Trademark Trial and Appeal Board when the adverse parties reside in districts not embraced in the same state.

### **FACTUAL BACKGROUND**

#### **THE ANTIOXIDANT SUPERPOWER MARK**

8. Plaintiff is a manufacturer of fruit juice under the ANTIOXIDANT SUPERPOWER ® mark.

9. Plaintiff is the owner of the entire right, title and interest in the Federal trademark for goods and services including, among others, the following valid, subsisting, and un-cancelled

trademark registration: ANTIOXIDANT SUPERPOWER - U.S. Trademark Reg., 3382295, February 12, 2008, for fruit juices.

10. A copy of the Certificate of Registration issued by the USPTO for this mark is attached hereto as Exhibit A.

11. TWC spends significant sums of money creating brand names for its beverages and has sold a significant amount of fruit juice under the ANTIOXIDANT SUPERPOWER mark.

12. Through its advertising and promotion of the ANTIOXIDANT SUPERPOWER mark and the popularity of its fruit juices, TWC has built and owns valuable goodwill symbolized by and associated with the ANTIOXIDANT SUPERPOWER mark.

13. Defendant's first use in commerce of the ANTIOXIDANT SUPERPOWER mark was in 2005.

#### **DEFENDANT'S TRADEMARK APPLICATION**

14. In February 2016, Defendant filed a trademark application for the SUPERPOWER mark for beer.

15. Defendant has sold and is selling products under the SUPERPOWER mark in several states.

16. Plaintiff has priority based on its use and application to register the ANTIOXIDANT SUPERPOWER mark for several years prior to Defendant's use or application to register the SUPERPOWER mark.

17. Defendant's SUPERPOWER mark is confusingly similar to Plaintiff's ANTIOXIDANT SUPERPOWER Mark.

18. On August 2, 2018, the TTAB issued a decision dismissing the opposition. A copy of this decision is attached hereto as Exhibit B.

19. Plaintiff seeks *de novo* review of the TTAB decision pursuant to Section 21 of the Lanham Act, 15 U.S.C. § 1071.

**CAUSE OF ACTION**

**REQUEST FOR REVERSAL OF TTAB DECISION AND REFUSAL OF PLAINTIFF'S**

**NOTICE OF OPPOSITION TO THE SUPERPOWER MARK**

20. Plaintiff alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 19.

21. Plaintiff is dissatisfied with the decision of the TTAB and its erroneous conclusion that Defendant's SUPERPOWER, is not likely to be confused with Plaintiff's ANTIOXIDANT SUPERPOWER mark.

22. The TTAB decision of August 2, 2018, should be reversed and vacated, and an order should be entered directing the USPTO to reverse its decision and sustain Plaintiff's trademark opposition against registration of Defendant's federal trademark application for the SUPERPOWER mark and thereby refuse registration of Defendant's U.S. Trademark Application No. 86905132.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

1. That the Court reverse the August 2, 2018, decision in the matter of *The Wonderful Company LLC v. Comrade Brewing Company, LLC*, Opposition No. 91230877 referenced herein, pursuant to 15 U.S.C. §1071(b);

2. That the Court order the United States Patent and Trademark Office to deny registration for U.S. Trademark Application No. 86905132, pursuant to 15 U.S.C. § 1119;

3. That the Court grant such other relief as it deems appropriate.

DATED: September 11, 2018

Respectfully submitted,

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